

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 401 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMKISHORE NANDKISHORE                    DELHIWALA

Versus

BABULAL BARELAL SINDERIA

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Appearance:

1. Criminal Revision Application No. 401 of 1988  
MR TS NANAVATI for Petitioner  
MR JJ YAJNIK for Respondent No. 1  
PUBLIC PROSECUTOR for Respondent No. 2
2. Criminal Revision Application No 21        of 1989  
MR TS NANAVATI for Petitioner  
MR JJ YAJNIK for Respondent No. 1  
PUBLIC PROSECUTOR for Respondent No. 2

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 14/07/97

ORAL JUDGEMENT

The respondent no.1 filed Revision Application No. 162 of 1987 in the Court of 1d. City Sessions Judge, Ahmedabad, which came to be dealt with by the 1d. Presiding Officer of Court No.3. By order dated 18th March 1988, the 1d. Judge was pleased to set aside the order of the 1d. Executive Magistrate, who had directed the petitioner before the 1d. Sessions Judge, to hand over possession of the disputed premises to the original applicant.

The 1d. Judge, in his elaborate order running into 15 typewritten pages, has dealt with the matter very succinctly and has correctly come to the conclusion that the powers under Section 145 of the Code of Criminal Procedure could not have been invoked and exercised by the 1d. Executive Magistrate, when there was no likelihood of breach of peace and the incident had happened about two months prior to the initiation of the proceedings in respect of which, already police complaint was filed and some proceedings were initiated.

Under the circumstances, when very jurisdictional fact was found lacking, obviously, the order of the 1d. Executive Magistrate could not have been sustained. That is exactly what the 1d. Sessions Judge has done and I do not see any merit in the revision application and therefore, the same is rejected. Rule is discharged. Interim relief stands vacated.

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